No. 08-1137

IN THE
Supreme Court of the United States

ENTEC CORPORATION, ET AL.,
Petitioners
v.

CENTRO DE RECAUDACIÓN DE INGRESOS MUNICIPALES,
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE COMMONWEALTH OF PUERTO RICO

PETITIONERS' REPLY BRIEF

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Rather than addressing the merits of Petitioners' petition for a writ of certiorari, Respondent chose to request dismissal on procedural grounds. Specifically, Respondent invokes the alleged preclusive effects of the decision of the Puerto Rico Court of First Instance (the "CFI") entered on December 13, 2005. Unfortunately for Respondent, this challenge is fundamentally flawed because (i) Petitioners raised the jurisdictional issue under § 2 of the Federal Arbitration Act since day one, and, (ii) Petitioners seek review of the CFI's decision entered on July 24, 2007.

With respect to the timely objection to the commonwealth courts' lack of jurisdiction to intervene with an on-going arbitration proceeding, see the "Memorandum Opposing Injunction Request and Motion to Order the CRIM to Proceed to Arbitration" and the "Answer to Second Amended Complaint". Vol. B of the Appendix to the Petition at pp. 134B-255B, 379B-446B.

Concerning the proper subject of review, it is the July 24, 2007 decision which denied Petitioners' motion of May 30, 2006 insisting on dismissal of the litigation for lack of jurisdiction and the remand to the constituted AAA arbitration panel where the parties were already engaged. Petitioners' motion placed this Court's ruling in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 126 S.Ct. 1204, 163 L.Ed.2d 1038 (2006), before the CFI. It is in the July 24, 2007 decision that the CFI rejected the merits of Petitioners' argumentation renewing the argument

under § 2 of the FAA as interpreted in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967), and clarified in *Buckeye*, by invoking an erroneous interpretation of the doctrine of the "law of the case." As indicated in the jurisdiction section of the petition to this Court (p. 1), the CFI's decision rejecting *Buckeye* was properly appealed through the applicable appellate levels within the time periods specified in P.R Stat. Ann. Tit. 31 App. III R. 53.1 and Supreme Court Rule 13 until it reached this Court. Clearly, the July 24, 2007 decision of the CFI has not become a final or binding decision and thus has no preclusive effect to this date.

Once again Petitioners note that a court's lack of jurisdiction is a matter that can be raised at any stage during judicial proceedings, even at the highest appellate level. See Petition at p. 4 n.1. In fact, and notwithstanding Respondent's assertion to the contrary, the CFI itself understood that it was within its purview to ascertain its jurisdiction in view of § 2 of the FAA as interpreted in *Prima Paint*, even after Petitioners' final challenge in the wake of *Buckeye*. This is readily ascertained through a reading of section III of the July 24, 2007 decision of the CFI (Vol. A of the App. at pp. 89A-97A) which addressed the merits of Petitioners' contention rather than dismissing the matter as moot as suggested by Respondent.[1]

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[1] It is also worth noting that the Puerto Rico Rules of Civil Procedure, P.R Stat. Ann. Tit. 31 App. III R. 49.2, allow parties to contest judgments as null and void within 6 months of their issuance based on the issuing court's lack of jurisdiction. Such judgments are not afforded preclusive effects. See *Medina v.*

Moreover the July 24, 2007 CFI decision, as upheld *sub silentio* by the Puerto Rico Court of Appeals and the Puerto Rico Supreme Court, represents a final judgment or decree rendered by the highest court of a state in which a decision could be had, which may be reviewed by this Court.[2] In the first place, the July 24, 2007 decision ended Petitioners' challenge to jurisdiction on the basis of § 2 of the FAA as interpreted in *Prima Paint* and *Buckeye*. Furthermore, because the CFI has already adjudged the underlying controversy in favor of Respondent, the denial of Petitioners' challenge to jurisdiction puts an end to the case for all practical purposes since no additional substantive proceedings are contemplated. See *Jefferson v. City of Tarrant, Ala.*, 522 U.S. 75, 118 S. Ct. 481, 139 L. Ed. 2d 433 (1997). As a general rule, a state court judgment is considered final for the purpose of further review in this Court when the judgment contemplates no further proceedings on the relevant issue in the state courts. See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S. Ct. 1029, 43 L. Ed. 2d 328 (1975); *Avery v.*

Chase Manhattan Bank, N.A., 737 F.2d 140 (1st Cir. 1984). To the extent that Petitioners' motion to dismiss pursuant to *Buckeye* could also be considered a challenge under P.R Stat. Ann. Tit. 31 App. III R. 49.2, that is also the case with the December 13, 2005 decision.

[2] While 28 U.S.C. § 1258 is the applicable jurisdictional statute with regards to judgments arising from the Puerto Rico Commonwealth Courts, it is analogous and does not differ significantly from 28 U.S.C. § 1257, the jurisdictional statute governing review of decisions arising from the courts of the States.

Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968).

Secondly, a case may be brought to this Court after the highest court in the state has refused to hear an appeal or has denied a petition for leave to appeal or for a writ of certiorari, as the Puerto Rico Court of Appeals and Puerto Rico Supreme Court acted respectively. In such a case, the last court to hear the matter is considered the highest state court in which a decision could be had. See *Cohen v. California*, 403 U.S. 15, 91 S. Ct. 1780, 29 L. Ed. 2d 284 (1971); *Mellon v. O'Neil*, 275 U.S. 212, 48 S. Ct. 62, 72 L. Ed. 245 (1927); *American Ry. Express Co. v. Levee*, 263 U.S. 19, 44 S. Ct. 11, 68 L. Ed. 140 (1923); *Bacon v. State of Texas*, 163 U.S. 207, 16 S. Ct. 1023, 41 L. Ed. 132 (1896). This is the case even with trial courts such as the CFI. See *Virginian Ry. Co. v. Mullens*, 271 U.S. 220, 46 S. Ct. 526, 70 L. Ed. 915 (1926); *Western Union Telegraph Co. v. Crovo*, 220 U.S. 364, 31 S. Ct. 399, 55 L. Ed. 498 (1911); *Bergemann v. Backer*, 157 U.S. 655, 15 S. Ct. 727, 39 L. Ed. 845 (1895). Otherwise, all that a state appellate or supreme court would need to do, to avoid this Court's review of jurisdiction in FAA matters, is to look the other way when an inconvenient FAA issue is brought to its attention.

Finally, the cases cited by Respondent in Section B of the argument in the brief in opposition (pp.13-14) do not apply to the present situation. As Petitioners have indicated, the July 24, 2007 decision of the CFI has been properly appealed.

CONCLUSION

The issue remains one of policy and jurisdiction under the FAA, *Prima Paint* and *Buckeye*. Should the law of the land weigh in differently in an unincorporated territory? Having jurisdiction to review the decision of the CFI contested by Petitioners, this Court should grant certiorari to reverse it along with the subsequent decisions of the Puerto Rico Court of Appeals and the Puerto Rico Supreme Court. Consequently this case should be returned to the constituted arbitration panel that had initially entertained the controversy between the parties for more than a year before the Commonwealth's court system intervened without jurisdiction.

Respectfully submitted,

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